IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 13880 of 2005

Between:

1.Y. Balachandraiah, S/o. Late Raghavaiah,
R/o.112, Netaji Road, Tirupathi, Chittoor District.
2.K. Parthasarathi Reddy, S/o. Venkata Reddy,
Patrampalle Village, Chittoor Mandal, Chittoor District.
3.P. Bhaskar Babu, S/o. Sreenivasulu,
(Indiramma), residing at Door No. 213/A, Prakasam Road, Tirupathi, Chittoor

District.
4.Smt. S. Suseela, W/o. S.V.L. Narayana,
R/o. Tiruchanur Road, Tirupathi, Chittoor District.

..... PETITIONERS

AND

1 The Mandal Revenue Officer, Tirupathi Urban Mandal, Chittoor District.
2 The Joint Collector, Chittoor, Chittoor District.
3 The Director of Settlements, Hyderabad.
4 The Chief Commissioner for Land Administration, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or direction more particularly one in the nature of a Writ of Mandamus and declare the action of the Director of Settlement, Hyderabad and the Chief Commissioner of Appeals, Hyderabad passed in their Rc.H1/2603/2000 dated 17-

10-2000 and C.C.L.A's Ref No. P3/1023/2000 dated 08-2-2005 respectively as illegal.

Counsel for the Petitioners: MR.Y.NARASIMHA REDDY

Counsel for the Respondents: GP FOR REVENUE

The Court at the admission stage made the following:

O R D E R:

It is the case of the petitioners that the father of the first petitioner was cultivating Ac.19.56 cents of land since 1925 in Sy.No.74/2 part, of Akkarampalle village, which was an unsurveyed Inam village and he approached the landholder and obtained permanent takid in respect of the schedule lands on 5.3.1940. Subsequently, the village came under survey in 1962 and due to wrong survey, the village lands came as tank poramboke, which father of the first petitioner did not know and he demised in 1964. As such the petitioner, on coming to know of the wrong survey, approached the Settlement Officer, Nellore and filed claim petition for the grant of ryotwari patta in his name in the year 1982. Consequently, the Settlement Officer, on conducting detailed enquiry and going through the permanent takid, granted joint patta by letter dated 24.11.1982 in his name and others name. Subsequently, he purchased the land from claimants 2, 5 to 8.

The Tahsildar, Chandragiri, stated that Sy. No. 74 admeasuring of 69.00 guntas was classified as tank poramboke and it was divided into Sy.No. 74/1 to 8 and actually the tank is situated in S.No.74/5 and 6. While so, the Director of Settlements, the third respondent herein, in exercise of powers under Sec. 5(2) of the Act, initiated suo moto powers and the petitioner filed WP No. 15405 of 1994 and the High Court by order dated 18.12.1995 allowed the writ petition setting aside the show cause notice and a Review Petition came to be filed, which was allowed. Thereafter, the Director of Settlements, Hyderabad, remanded the matter for de novo enquiry to the Joint Collector, against which the petitioner preferred Revision to the Chief

Commissioner for Land Administration, Hyderabad, which was dismissed on 8.2.2005. Aggrieved of the said order, the present writ petition is filed.

The learned counsel for the petitioners contend that the learned Commissioner ought to have seen that the suo motu powers cannot be exercised either by the Director of Settlements under Sec. 5(2) of the Act or by the Commissioner under Sec. 7 of the Act beyond reasonable period, unless fraud is attributed to the petitioner or in case the patta is obtained by illegal methods. Contending so, reliance is sought to be placed on a catena of decisions viz., *State of Gujarat Vs. Patel Raghav Natha and others (); Kalleti Chengaiah Vs. Director of Settlement and others(); A.Kondanda Rao and another Vs. Government of A.P. represented by the District Collector, Srikakulam()* and *Mirza Muzamdar Hussain Vs. Dodla Bhaskara Reddy and others().*

On the other hand, the learned Government Pleader for Revenue, contends that where it comes to the knowledge that the petitioners have obtained any order after playing fraud, no limitation is prescribed to initiate suo motu revision by the Authority. Contending so, he sought to place reliance on a Bench decision of this court in *Director of Settlements, Hyderabad and others Vs. Neerupaka Rama Krishna()*. He further contends that since the authorities have entertained a doubt as to the nature of the lands in question, they have resorted to invoke suo motu powers under Sec. 5(2) of the Act and ordered de novo enquiry.

Evidently, the matter is remanded to the Settlement Officer, Nellore for de novo enquiry within a time frame and the revision preferred to the 4th respondent therefrom, stood dismissed. As contended by the learned Government pleader, since the de novo enquiry was ordered entertaining doubt about the nature of enquiry, I am of the considered view that the ratio laid down in the decisions relied by the learned counsel for the petitioners can hardly be applied. That apart, by virtue of filing this writ petition, the de novo enquiry could not be completed,

therefore, the approach of the petitioners is pre-mature. Further, the order dated 13.12.1999 passed in RP No. 6/94 H1 shows that the Settlement Officer reported that the file had not been transferred from the defunct Settlement Officer's Office, Nellore, as could be verified from the list of records handed over by the defunct Settlement Officer, Nellore and, therefore, it is evident that there is no conclusive proof to the effect that the above case was disposed of by the then Settlement Officer, Nellore and the disposal of the case itself is in doubt inasmuch as neither the original disposal of the then Settlement Officer, Nellore was traced nor the Original records of the Settlement Officer, Nellore is available and therefore, it cannot be said that the order passed by the Settlement Officer, Nellore is genuine. In these circumstances, the finding of the Division Bench in Neerupaka Rama Krisha's case, that the show cause notice though issued after 35 years, is not liable to be challenged when the ground for the same is one of the fraud, applies in all fours. This finding was arrived at after considering a catena of decisions of this court and the Apex Court. In view of these facts, I am not able to appreciate the contention of the learned counsel for the petitioners. More so, there is no foundation laid for a contention. It is a settled principle of law that for raising even a legal contention, there must be foundation in the pleadings. Therefore, in the absence of such a plea, such a contention cannot be accepted. Accordingly, the writ petition fails and is dismissed. No order as to costs.

(ELIPE DHARMA RAO, J)

Date:29-06-2005

Note: Issue CC in one week.

B/o

ghn

To

1 The Mandal Revenue Officer, Tirupathi Urban Mandal, Chittoor District.
2 The Joint Collector, Chittoor, Chittoor District.
3 The Director of Settlements, Hyderabad.
4 The Chief Commissioner for Land Administration, Hyderabad.

5 Two CCs to the Government Pleader for Revenue, High Court of A.P., Hyderabad. (O.U.T.)

6 Two CD copies.